HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1921 OF 2007.

Rahul Namdeo Kapare. ..Petitioner.

Versus.

1. The District Magistrate,
Pune.

2. The Divisional Commissioner,
Pune Division, Pune.

3. State of Maharashtra
Through: API Yewat Pl.Station. ..Respondents.

Kuldeep S. Patil for the petitioner.

D. S. Mhaispurkar APP for the State.

CORAM: S. B. MHASE &
SMT. V.K.TAHILRAMANI,JJ.

DATE: DECEMBER 12, 2007.

ORAL JUDGMENT (Per S.B.Mhase, J.).

1. Rule returnable forthwith.

2. The petitioner was possessed of a revolver licence bearing No. PN/G/Daund/1/1999. When the said licence was submitted for renewal it was cancelled by an order dated 5.5.2005 by the District Magistrate, Pune. It was cancelled on a ground that there are reports from the Police Superintendent dated 6.3.2003 & 28.12.2004 that the petitioner has used the said revolver to threaten the villagers of village Kedgaon and therefore the C.R.No. 187 of 2002 under section 143, 147, 149 and

341 of the Indian Penal Code has been registered against the petitioner. Therefore the District Magistrate observed that for maintaining the public peace and tranquillity and security it is appropriate not to keep the arms with the petitioner and therefore in view of the powers under section 17 of the Arms Act, 1959 licence of the petitioner was cancelled. The said order was challenged by the petitioner by filing an appeal being Arms Appeal No. 16 of 2005 before the Divisional Revenue Commissioner, which is the appellate authority. The appellate authority by order dated 9.12.2005 dismissed the said appeal. Therefore the petitioner has approached this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2. The grievance of the petitioner is that the ground resorted to by the respondent for cancelling the licence is a stale one and on the same ground the earlier proceeding for cancellation of licence was carried out. However that proceeding was dropped by the District Magistrate himself, and thereafter for the second time, relying upon the said stale material the impugned order has been passed.

3. It appears that earlier the District Magistrate has initiated a proceeding for cancellation of the licence as is evident from the letter and notice dated 10.3.2003. In the said notice it has been stated

that there is a report from the Superintended of Police, Pune that the offence under sections 143, 147, 149 & 341 of the IPC, bearing C.R.No.187 of 2002 has been registered at police station Yewat and therefore the licence may not be renewed. The show cause notice was accordingly issued to the petitioner. However later on this proceeding was dropped by the District Magistrate and order to that effect was passed by the District Magistrate on 31.7.2003 wherein it has been observed that the cases have been registered against the petitioner since he was taking part in agitation of farmers organisation and since the offence has not been proved as against the petitioner it will not be proper to cancel the licence. When it is observed that unless there is conviction the licence cannot be cancelled, then it was not proper on the part of the respondent to cancel the licence because of the pendency of the said case, as the material and grounds in the order dated 5.5.2005 and those in the earlier order are same as was the material which was considered by the District Magistrate at the time of proceeding in the year 2003.

4. When it is established and admitted that the grounds which are already in existence were considered and found to be insufficient for cancellation of the licence, the same grounds cannot be a foundation for a valid order of cancellation subsequently. Therefore, in our view, the impugned order stands vitiated and it

suffers from non application of mind. Not only that, but it also shows that with an ulterior motive to cancel the licence, the stale ground has been used by the authority and the power has been mis-used by the respondent. We find that the impugned order suffers from serious illegalities and therefore does not survive in law.

5. We therefore allow the writ petition and we hereby quash and set aside the order dated 5.5.2005 cancelling the revolver licence of the petitioner. We also quash and set aside the order passed by the appellate authority in Arms Appeal No. 16 of 2005 dated 9.12.2005. We accordingly allow the petition and direct the respondents to issue appropriate licence to the petitioner in accordance with law as early as possible and preferably within 15 days. Rule is made absolute accordingly.

(SMT. V.K.TAHILRAMANI,J.) **(S.B.MHASE, J.)**

:sachin/2007/vkt/..